

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-94-77 and should be submitted by February 28, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35306; File No. SR-Phlx-94-23]

#### Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Inter-Currency Spread Priority

January 31, 1995.

On August 1, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow spread priority for eligible spreads between two different foreign currency options ("FCOs").

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on December 7, 1994.<sup>3</sup> No comments were

received on the proposal. This order approves the proposal.

#### I. Description of the Proposal

The purpose of this proposal is to amend the current definition of spread order contained in Rule 1066(f)(1) to include transactions involving options in two different foreign currencies ("inter-currency spread") and to extend the spread priority principles to inter-currency spread orders.

Rule 1066(f)(1) currently defines a spread as an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options. The Exchange proposes to extend this definition by adopting Rule 1066(f)(1)(A), Inter-Currency Spread Order, as a subcategory of spread order.<sup>4</sup> Furthermore, the Exchange proposes to adopt Rule 1033(i), Inter-Currency Spread Priority, in order to extend the current spread priority principles to inter-currency spreads. As a result, an inter-currency spread involving any two FCOs, American-<sup>5</sup> or European-style<sup>6</sup> expiration, and any expiration date (regular, month-end, or long-term) will not be eligible for spread priority treatment, as described below. Inter-currency spread priority pursuant to the proposed rule change would not, however, be available for cross-rate, cash/spot, or the Exchange's customized FCOs.

Inter-currency spreads are currently executed as contingency orders pursuant to Phlx Rule 1066. For example, an FCO floor broker would quote a French franc market as well as a Swiss franc market, in each respective trading crowd; then, the floor broker would announce "99 bid for 99 Sep 99 French franc calls if I can sell 99 Dec 99 Swiss franc puts at 99." However, each component of the spread must be bid/offered individually, which, according to the Exchange, generally means that each component is executed at a price better than the established bid/offer. In addition, the Exchange believes that because each leg must be executed between the established market, such contingency orders are more likely to be broken up by market interest in one leg,

such that the end result may be a different number of contracts for each leg.

The Phlx's current priority rule, Rule 1033(d), allows a spread order (which includes a spread involving only one foreign currency) to be executed as a single transaction at a total net debit or credit with one contra-side.

Furthermore, an eligible spread can be afforded priority as long as the net credit/debit improves the established market for the spread, provided, however, that at least one option leg is executed at a better price than the established market for that option and no option leg is executed outside of the established market for that option. The same principles apply to three-way, ratio, and multi-spread transactions in foreign currency.<sup>7</sup>

The Exchange believes that extending priority treatment to inter-currency spreads is appropriate for several reasons. First, the Exchange believes that spread priority for inter-currency spreads will facilitate a more simplified procedure for the execution of such orders. In this context, Phlx notes that the execution of inter-currency spreads as contingency orders may present a logistical problem given that floor brokers must, in exercising due diligence, shuttle between two trading crowds or, to prevent a trade from occurring while the floor broker is in the second crowd, utilize two floor brokers to execute such an order. Second, inter-currency spreads provide a trading strategy for FCO market participants based on the interplay between the currencies of two countries, similar to the advantages and opportunities associated with cross-rate FCOs.<sup>8</sup> The Exchange believes that the availability of such strategies should enhance liquidity in existing FCOs. Finally, the Exchange believes that the requirement in proposed Phlx Rule 1033(i) that each leg of an inter-currency spread be executed at or within the market for the individual leg, and that at least one leg be executed at a price which improves the established market, will benefit investors. The Exchange states that this requirement is also consistent with Phlx Rule 118 which provides that when a bid/offer is clearly established, no bid/offer outside that price shall be established.

<sup>4</sup> Proposed Phlx Rule 1066(f)(1)(A) defines Inter-Currency Spread Order in the following manner: In the case of foreign currency options, a spread order may consist of an order to buy a stated number of option contracts in one foreign currency and to sell the same number of option contracts in a different foreign currency option.

<sup>5</sup> An American-style option is one that can be exercised at any time prior to expiration of the option.

<sup>6</sup> A European-style option is one that can only be exercised during a specified period immediately prior to expiration of the option.

<sup>7</sup> See Securities Exchange Act Release No. 34015 (November 29, 1994).

<sup>8</sup> A cross-rate currency option is an option to purchase or sell a foreign currency at an exercise price that is denominated in another foreign currency. The exercise price, therefore, represents an exchange rate between two foreign currencies.

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> See Securities Exchange Act Release No. 35023 (November 29, 1994), 59 FR 63149.

## II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).<sup>9</sup> In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, and dealers.

The Commission believes that allowing inter-currency spread orders to attain spread priority is appropriate for several reasons. First, because the FCO market is dominated by institutional and corporate investors, the preemption of public customer limit orders (a concern of the Commission in the context of equity and index options), is unlikely. In this regard, the Commission notes that the proposed changes are applicable solely to the FCO market, which is dominated by institutions and sophisticated corporate investors. This is in part due to the complex nature of the instruments and the tremendous size of the underlying currency markets.

Second, because inter-currency spreads are currently executed as contingency orders, and therefore more susceptible to non-execution, the Commission believes granting priority to such orders will facilitate their execution and, therefore, may lead to more efficient quotes and tighter spreads.

Third, the priority principles applicable to inter-currency spreads mirror the priority rules currently in place for regular FCO spread orders. As a result, an inter-currency spread may be executed at a total net credit/debit with one other participant, provided at least one leg of the spread is executed at a better price than the established bid or offer for that contract and that no option leg is executed at a price outside of the established bid or offer for that option contract. Accordingly, the Commission believes that this change will allow institutional and corporate investors to better utilize sophisticated trading techniques involving FCOs for hedging and risk management purposes without altering the existing priority principles.

Finally, because the proposed definition limits an inter-currency spread to a maximum of two foreign currencies, the Commission notes that

the logistical problems and confusion attendant to the execution of orders involving three or more foreign currencies will be avoided.

*It therefore is ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Phlx-94-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-2908 Filed 2-6-95; 8:45 am]

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[Rel. No. IC-20875; File No. 812-9142]

### First SunAmerica Life Insurance Company, et al.

February 1, 1995.

**AGENCY:** Securities and Exchange Commission ("SEC" or the "Commission").

**ACTION:** Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

**APPLICANTS:** First SunAmerica Life Insurance Company ("First SunAmerica"), FS Variable Annuity Account Two ("Separate Account"), and Vista Broker-Dealer Services, Inc. ("Vista").

**RELEVANT 1940 ACT SECTIONS:** Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 26(a) and 27(c)(2) thereof.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the deduction of mortality, expense risk, and distribution expense charges from the assets of the Separate Account under certain variable annuity contracts ("Contracts") funded through the Separate Account and under materially similar contracts ("future contracts") funded in the future through the Separate Account, and from the assets of any other separate account ("future separate accounts") established in the future by First SunAmerica in connection with the issuance of contracts that are materially similar to the Contracts.<sup>1</sup>

**FILING DATE:** The Application was filed on August 3, 1994, and amended on November 22, 1994, and December 20, 1994.

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1982).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> Applicants have agreed to amend this application during the notice period to reflect that the future contracts and contracts issued by future separate accounts relying on the exemptive relief requested here shall be materially similar to the Contracts.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on February 27, 1995, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants c/o Mark J. Mackey, Esq., Routier, Mackey and Johnson, P.C., 1700 K Street, NW., Suite 1003, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Patrice M. Pitts, Attorney, or Wendy Finck Friedlander, Deputy Chief, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission.

### Applicants' Representations

1. First SunAmerica is a stock life insurance company organized under the laws of the State of New York. On May 24, 1994, First SunAmerica established the Separate Account to fund variable annuity contracts. The Separate Account is registered under the 1940 Act as a unit investment trust. The Separate Account and each of its portfolios are administered and accounted for as part of the general business for First SunAmerica, but the income, gains and losses of each portfolio are credited to or charged against the assets held in that portfolio in accordance with the terms of the Contracts, without regard to other income, gains and losses of any other portfolio or arising out of any other business First SunAmerica may conduct.

2. Vista is a broker-dealer registered under the Securities Exchange Act of 1934, and is the distributor for the Contracts.

3. The Contracts provide for accumulation of contract values and payments of annuity benefits on a fixed and variable basis. The Contracts are

<sup>9</sup> 15 U.S.C. 78f(b)(5) (1982).